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## REVIEWS

*The International Law and Diplomacy of the Russo-Japanese War.*

By Amos A. Hershey. New York. The MacMillan Co., 1906.

Pages 394. \$3.

The Russo-Japanese war had a unique interest to students of international law. It was the first and still remains the only war since the Hague Conference of 1899, in which both parties were adherents to the conventions framed by that Conference.

It was therefore fair to expect that it would be conducted with more regard both to humanity and to the principles of international justice, than has been apt to characterize such conflicts between nations in former days. Professor Hershey, who holds the chair of Political Science and International Law in Indiana University, has done a real service in recounting the general course of this war so far as it may illustrate the development of those branches of jurisprudence, and giving us the benefit of his own conclusions. These are expressed with moderation, and, if favorable on the whole to the Japanese contentions, are hardly more so than the judgment of at least Anglo-American public opinion.

Did Japan transgress any recognized rule of international obligation when she struck at Port Arthur before any formal declaration of war? Professor Hershey is of opinion (pp. 60, 61, 66) that the notice which she gave Russia on February 6 of her reserved right to take such action as it might deem best to protect her own interests was under the circumstances enough to justify her naval attacks on February 8. The telegraph in our times is a swift and certain messenger, and if Russia had not anticipated war as a probable result of its refusal of Japan's overtures toward a settlement, it was her own fault.

Professor Hershey considers the protest of Russia against Japan's forcing Korea to admit her troops, at the outset of the war, as theoretically sound but practically absurd (p. 72). Neutral territory, for the control of which a war is being fought, can hardly expect to be left in peace by either belligerent. Nor can it be forgotten that Korea had been for a considerable part of its more recent history practically under Japanese control, and was but fifty miles away from the island empire.

The author does not think our government failed in the duty of neutrality by doing nothing to check popular but private subscriptions in aid of the Japanese (pp. 84, 87). Here again the question is one of practice. Too much weight, he thinks, has been accorded to some observations which have fallen from the courts on this subject. The tendency of law students and perhaps of publicists is to search for particular judicial precedents, rather than for the general practice of nations, and that it encourages this tendency he deems "one of the gravest objec-

tions to the teaching of International Law mainly or exclusively by the use of the 'case system'" (p. 85).

The Russian assertion of a right to treat newspaper correspondents, making use of wireless telegraphy on the high seas, as spies, the author considers not only as contravening the Hague Convention of 1899 as to the rules of Land Warfare, but as wholly against sound reason (pp. 118, 121). The opinion of the Institute of International Law (p. 135) expressed at Ghent in September, 1906, is to the same effect. In respect to the general instructions to their commanders by both governments regarding the conduct of military operations, Professor Hershey justly emphasizes (p. 294) the fact that they are the expression of an advancing civilization, which is gradually stripping war of many of its horrors.

As to the vexed question of limiting the supply of coal furnished to belligerent men of war visiting a neutral port, he ranges himself with those who would confine it to no more than will take them to the nearest convenient port, at which they can safely call (pp. 89, 214).

The style of the treatise is clear, the arrangement simple and the index full.

S. E. B.

*The First Year of Roman Law.* By Fernand Bernard. Translated by Charles P. Sherman, D. C. L., Oxford University Press.

The title of this volume reveals its true purpose. It is not intended to be a comprehensive work on Roman Law, but a first year book, setting forth many of the essential facts of the subject in a brief and interesting way, to be followed by the study of a second year book by the same author, not yet accessible in English translation. As Professor Bernard states in his preface, this book, in spite of its restricted dimensions, is not intended to be one of those lifeless skeletons of the subject so much employed abroad as brief digests for the cram of preliminary examinations in Roman law. It is a book by which one may well begin his acquaintance with the subject and, notwithstanding its modest size, the volume is peculiarly satisfactory in its content, in that it embodies modern doctrine and the results of recent scholarly research. It should be said that the author has followed very closely the teaching of the law faculty of Paris and that he has therefore laid under contribution only five contemporaneous writers, Cuq, Girard, Esmein, Gérardin, Jobbé-Duval. In clinging too exclusively to French authorities, however, there is always the danger of yielding too much to their brilliant speculations regarding those institutions which are to a greater or less extent being affected in the present day by the discovery of new sources. For the interpretation of the legal papyri, which have already shed much new light on many phases of legal history and the details of legal transactions, there is need of vast philological and legal knowledge, as well as most conservative judgment. In this field one cannot safely disregard the import-